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MAGA'HÅGA • GOVERNOR



JOSHUA F. TENORIO  
SIGUNDO MAGA'LÅHI • LIEUTENANT GOVERNOR

November 12, 2020

**MR. KEVIN C. WILLIS**

*Director*

Office of Airport Compliance and Management Analysis  
U.S. Department of Transportation  
Federal Aviation Administration  
800 Independence Ave., SW.  
Washington, DC 20591

**Re: Guam's Action Plan in Response to FAA Aviation Fuel Tax Policy Amendment**

*Hafa Adai Mr. Willis:*

I am in receipt of your letter dated October 13, 2020 relative to your follow-up on additional information requested by the Federal Aviation Administration (FAA) for Guam's Action Plan in Response to FAA Aviation Fuel Tax Policy Amendment. Thank you for your patience in receiving a response given the ongoing 2019 Novel Coronavirus (COVID-19) pandemic that has greatly impacted all facets of lives not only in Guam, but throughout the world.

### **Overview and Background**

The last time the government of Guam responded to the FAA's inquiry relative to the aforementioned topic was in a letter dated January 8, 2016 under the administration of former governor Edward J. B. Calvo<sup>1</sup>. In that response, former Governor Calvo explained that local laws mandating the levy of excise taxes on aviation fuel have been in effect since before December 30, 1987 and as provided for in the FAA's policy, the taxes qualify for grandfather status and may [be] used for other than airport purposes because they are not subject to the policy's revenue-use requirements.

Since then, the FAA sent a follow up letter to former Governor Calvo dated December 21, 2017. No response that my office is aware of has since been sent. I received the letter from the FAA dated June 19, 2019 and it is my intent to provide you with a response to the requests from the FAA at this time and I am appreciative for allowing the government of Guam to review and research this issue to ensure an adequate response is provided.

<sup>1</sup> See Letter dated January 8, 2016 – Governor E. Calvo to FAA Acting Director B. Huffman

To: Mr. Kevin C. Willis  
Fr: Governor of Guam  
Dated: November 12, 2020  
Re: Guam's Action Plan in Response to FAA Aviation Fuel Tax Policy Amendment

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## Update to Aviation Fuel Tax Rate

On October 12, 2017, Bill 122-34 was signed into law by former Governor Calvo as Public Law (P.L.) 34-44 which amended § 26403(b) of Article 4, Chapter 26, Title 11 of the Guam Code Annotated (GCA) relative to having increased the liquid fuel tax rate on fuel used for commercial aviation purposes (aviation fuel tax) from four cents (\$0.04) per gallon to eight cents (\$0.08) per gallon<sup>2</sup>. This increase to the aviation fuel tax was effective on January 1, 2018 pursuant to P.L. 34-44.

Prior to the enactment of P.L. 34-44, the language of the law that stood on December 30, 1987 under § 26403, Article 4, Chapter 26, Title 11 GCA read as follows:

### § 26403. Rates.

The following rates shall apply in computing, assessing and collecting the liquid fuel tax:

- (a) A tax at the rate of Ten Cents (\$0.10) per gallon on diesel fuel; and
- (b) A tax at the rate of Eleven Cents (\$0.11) per gallon on all other liquid fuel as defined herein *except* liquid fuel used for commercial aviation purposes which is taxed at a rate of Four Cents (\$0.04) per gallon.

The Guam Compiler of Laws<sup>3</sup> website reflects the updated language pursuant to P.L. 34-44 but provides source reference under the aforementioned § 26403 which states:

“**SOURCE:** GC § 19571, amended by P.L. 15-074 (Oct. 24, 1979), P.L. 17-004 (Apr. 7, 1983), and P.L. 34-044:1 (Oct. 12, 2017).”

## Compliance Plan

As a result of the aforementioned updates to the aviation fuel tax and the lack of correspondence found between the prior gubernatorial administration and the FAA after the December 21, 2017 letter from the FAA, even with knowledge of enactment of P.L. 34-44 just a couple months prior on October 12, 2017, I find it incumbent of my administration—that began in January 2019—to rectify this issue moving forward.

The increase to the aviation fuel tax was effective on January 1, 2018 pursuant to P.L. 34-44. Approximately \$10.33 million in aviation fuel taxes were collected for the effective period beginning January 1, 2018 (those aviation fuel taxes collected in February 2018 for the prior month of January 2018) through September 30, 2020. The amount attributable to the increase in the aviation fuel tax from \$0.04 to \$0.08 for the same period was approximately \$5.17 million.

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<sup>2</sup> See Public Law 34-44: [http://www.guamlegislature.com/Public\\_Laws\\_34th/P.L.%20No.%2034-44.pdf](http://www.guamlegislature.com/Public_Laws_34th/P.L.%20No.%2034-44.pdf)

<sup>3</sup> See Guam Compiler of Laws Website: <http://www.guamcourts.org/CompilerofLaws/GCA/11gca/11gc026.PDF>

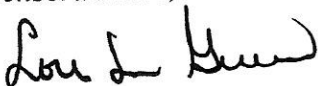
Aviation Fuel Tax Collections - January 2018 - September 2020		
Unaudited	AFT Collections (at \$0.08 per gallon)	P.L. 34-44 (\$0.04 per gallon)
Jan. 2018 - Sep. 2018	2,451,041	1,225,521
Oct. 2018 - Sep. 2019	3,601,065	1,800,533
Oct. 2019 - Sep. 2020	4,280,400	2,140,200
<b>Total</b>	<b>10,332,506</b>	<b>5,166,253</b>

The government of Guam's plan to come into compliance with the FAA revenue use requirements as specified in your letter is to request for forgiveness of the past due amounts and direct payments toward airport purposes and future amounts collected through September 30, 2021 with full compliance beginning on October 1, 2021. As you may be aware, liquid fuel taxes, including the aviation fuel taxes collected, are deposited into the special revenue fund called the Guam Highway Fund, which is fully appropriated each year to operate several departments and agencies of the government of Guam. Considering the impacts of the COVID-19 pandemic on the government of Guam's finances, I respectfully request approval for prospective payments of the aviation fuel tax attributed to the increase in P.L. 34-44 for airport uses commence on October 1, 2021.

Upon October 1, 2021, the government of Guam will remit \$0.04 of the \$0.08 per gallon aviation fuel tax to the A.B. Won Pat International Airport Authority, Guam (GIAA) for authorized airport uses as authorized in applicable federal law. This will be a coordinated effort between the government of Guam Department of Administration (DOA), the agency that accounts for the collections received by the government and the GIAA administration whereby on a monthly basis, the DOA will remit the applicable portion of aviation fuel taxes to the GIAA with reconciliations to be achieved between the agencies on a quarterly and annual basis.

I appreciate your consideration and patience and look forward to your favorable response to this request and compliance.

*Senseramente,*



**LOURDES A. LEON GUERRERO**

*Maga'hågan Guåhan*

Governor of Guam

Enclosure(s): Letter dated January 8, 2016

cc via email: *Sigundo Maga'låhen Guåhan* (Lt. Governor of Guam)



EDDIE BAZA CALVO  
Governor

RAY TENORIO  
Lieutenant Governor

*Office of the Governor of Guam*

January 8, 2016

Byron K. Huffman  
Acting Director  
Office of Airport Compliance and  
Management Analysis  
Federal Aviation Administration  
800 Independence Avenue, SW  
Washington, D.C. 20591

Dear Mr. Huffman:

Thank you for giving the Government of Guam the additional time to respond to your letter of November 24, 2015, regarding its compliance with the Federal Aviation Administration's *Policy and Procedures Concerning the Use of Airport Revenue; Proceeds from Taxes on Aviation Fuel* (79 Fed.Reg. 6628) (Amendment).

In Guam, local laws mandating the levy of excise taxes on aviation fuel have been in effect since before December 30, 1987. Accordingly, as provided for in the FAA's policy, the taxes qualify for grandfather status and may be used for other than airport purposes because they are not subject to the policy's revenue-use requirements.

Specifically, aviation fuel has been continually taxed since 1953 when the Business Privilege Tax Law was enacted by Guam Public Law 2-43. Under Subchapter D of Public Law 2-43, an excise tax was broadly assessed against "all liquid fuel manufactured or produced and sold, stored or used by him in Guam, or imported or acquired from persons not taxable hereunder and sold, stored, or used by him in Guam. . ."<sup>1</sup> The 1953 levy expressly contemplated that assessments would be made on aviation and marine fuel.<sup>2</sup>

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<sup>1</sup> PUB.L. 2-43 at §19,570 (emphasis added).

<sup>2</sup> See e.g., PUB.L. 2-43 at §19,572.02 providing for refund or drawback of 2 cents per gallon on rates assessed for "liquid fuel purchased solely for marine or *aviation purposes* and not used on the public roads on Guam..." (emphasis added).

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Over the years, the Guam liquid fuel tax laws have been amended in order to clarify the inclusion of particular types of fuels and to provide for certain user exemptions. None of the amendments, however, did anything to repeal or otherwise substantively change the requirement of taxation on liquid fuel used for commercial aviation purposes.

Thank you again for the opportunity to address the FAA's policy on this subject. If you have any questions or concerns, please contact John P. Camacho, Director of Revenue and Taxation at (671) 635-1817.

*Senseramente,*



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**EDDIE BAZA CALVO**

cc: Bernadette F. Artero, Chief Fiscal Advisor  
John P. Camacho, Director – Dept. of Revenue and Taxation  
Charles H. Ada II, Executive Manager – Guam International Airport Authority